

Before the  
**COPYRIGHT ROYALTY BOARD**  
United States Copyright Office  
Washington, DC

*In re*

Distribution of Digital Audio Recording  
Royalty Funds

**CONSOLIDATED**  
Docket No. 2008-3 CRB DD  
(2007-2011 SRF)

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**RESPONSE TO EUGENE CURRY’S EXHIBIT**

Pursuant to the Copyright Royalty Board (“CRB”)’s order dated April 4, 2019, the Alliance of Artists and Recording Companies (“AARC”) hereby files its response addressing the CRB’s preliminary finding and opposing Eugene Curry (“Curry”)’s Motion for Leave to File a Late Petition to Participate. Order Acknowledging Receipt of Responsive Exhibit from Eugene Curry and Authorizing Response (Apr. 4, 2019) (“CRB Preliminary Finding Order”); Motion to Re-consider AARC Proposed Order for Eugene Curry Dismissal Due to Extraordinary Circumstances (March 23, 2019) (“Curry Motion to Reconsider”); Motion for Leave to File a Late Petition to Participate (Mar. 5, 2019) (“Curry Motion Seeking Leave”).

On April 4, 2019, the CRB issued an order preliminarily finding that the exhibit submitted by Curry supports his “assertion that he has been delayed in refiling a petition to participate because he has been providing care to a close friend or relative who began undergoing treatment for a serious medical condition beginning on or about April 20, 2017.” CRB Preliminary Finding Order at 1. As detailed below, AARC does not believe Curry’s allegations establish “substantial good cause,” because they are not supported by the facts of this case. Therefore, AARC respectfully requests that Curry’s motion seeking leave to file a late petition be denied. 17 U.S.C. § 803(b)(1)(A)(ii) (2017); 37 C.F.R. § 351.1(d) (2019); Order

Granting AARC Motion to Reject Eugene Curry's Defective Filing and Dismissing Eugene Curry (Feb. 27, 2019) ("Order Dismissing Curry").

### **ARGUMENT**

Curry should not be permitted to refile a valid petition to participate after the January 25, 2019 deadline because he has failed to establish "substantial good cause." 17 U.S.C. § 803(b)(1)(A)(ii); 37 C.F.R. § 351.1(d). It is important to distinguish that the issue here arises not from Curry's failure to file *anything* by the deadline, since he has filed numerous documents before and after that due date. The issue here arises from Curry's failure to file a petition that satisfied the statutory, regulatory and CRB directed requirements. Petition to Participate in the Consolidated Proceeding in the Distribution of Funds Remaining in Sound Recording Sub-funds (Dec. 22, 2018) ("Curry Petition"); Order Dismissing Curry at 3. In fact, Curry has been quite active in CRB proceedings during the period of April 2017 to the present, when he claims, he was too busy caring for a friend or relative to file a valid petition.

Curry alleges, in his Motion to Reconsider that "[t]he reason for lack of focus this one time to procedure to detail in these proceeding's is that [his] lady Lisette Dejesus was diagnosed with two forms of Cancer . . . [he] had to become her care giver[sic]." Curry Motion to Reconsider at 1. The CRB, after reviewing an exhibit provided by Curry, preliminarily found that Curry's assertion is supported by the exhibit regarding his friend's or relative's illness. CRB Preliminary Finding Order at 1. We cannot ascertain whether Curry's exhibit supports his assertion since AARC has not seen the exhibit. However, the CRB Preliminary Finding Order does note that Curry began caring for his friend or relative "on or about April 20, 2017."

Regardless of the details listed in Curry's recent exhibit, the facts establish that Curry has submitted numerous filings with the CRB during the period of April 2017 to the present. He has

filed documents with the CRB nearly one dozen times during that time period. Seven of those filings were claims in other DART proceedings.

**Curry Documents Filed With The CRB After April 2017**

Date	Document
January 8, 2018	1. 2017 DART MWF (P) Claim 2. 2017 DART-SRF (CO) Claim 3. 2017 DART MWF (W) Claim
December 22, 2018	4. Petition to Participate in the CONSOLIDATED Proceeding In the Distribution of funds remaining in Sound Recording Sub-funds
January 3, 2019	5. 2018 DART MWF (P) Claim 6. 2018 DART SRF (CO) Claim 7. 2018 DART MW (W) Claim
January 5, 2019	8. 2018 DART MW (W) Claim
March 5, 2019	9. Petition for Leave to file Motion to Participate in the Distribution of the Consolidated DART Royalty Sound Recording Fund Non-Featured Artist sub-fund
March 23, 2019	10. MOTION To Re-consider AARC PROPOSED ORDER FOR EUGENE CURRY DISMISSAL due to Extraordinary Circumstances
April 4, 2019	11. Exhibit from Eugene Curry

In the current consolidated proceeding, Curry has filed several documents which, irrespective of their defectiveness, were filed timely, if not early. Specifically, Curry filed his defective document titled as a “Petition to Participate” more than a month before the due date. Distribution of the 2007, 2008, 2009, 2010, and 2011 Digital Audio Recording Technology Royalty Funds for the Sound Recordings Funds, 83 Fed. Reg. 66,312, 66,312 (Dec. 26, 2018) (“Consolidated Proceeding Notice”); Curry Petition. After Curry was dismissed, it took him less than one week, well-before the due date, to file a motion seeking leave to file a late petition. Order Dismissing Curry; Curry Motion Seeking Leave; 17 U.S.C. § 803(b)(1)(A)(ii); 37 C.F.R. § 351.1(d). Additionally, Curry replied to AARC’s draft order, included with its opposition to his motion, in two days. Draft Order Denying Curry’s Motion for Leave (Mar. 21, 2019); Opposition to Eugene Curry’s Motion for Leave to File a Late Petition to Participate (Mar. 20, 2019); Curry

Motion to Reconsider. Finally, Curry also managed to refile the exhibit in two days after the CRB issued its order granting him leave to do so. Order Granting Eugene Curry Leave to Refile Exhibit (April 2, 2019); CRB Preliminary Finding Order (acknowledging that Curry refiled the exhibit on April 4, 2019). Therefore, all these facts support a finding that Curry's caregiver responsibilities have not prevented him from submitting timely filings with the CRB.

The facts demonstrated above do not support Curry's specific allegations that his failure to resubmit a valid petition to cure his defective filing resulted from his inability to "focus" on this consolidated proceeding due to his caregiving responsibilities. Curry had a month to cure his defective pleading after the CRB's two-page order, clearly detailing the requirements for filing a valid petition, was served on him electronically. Consolidated Proceeding Notice. Additionally, he was notified of the filing requirement included in the Consolidated Proceeding Notice by the time he submitted his defective filing because he "was aware of the Consolidation Order, which contained a similar requirement." Order Dismissing Curry at 4; Order Consolidating Proceedings (Dec. 17, 2018). Nonetheless, Curry, rather than trying to comply with CRB instructions, the statute and the regulations, made no attempt to refile a correct petition during the thirty-day period. However, he did manage to file four (4) DART claims to the Sound Recordings Funds and Musical Works Funds in three (3) separate subfund proceedings. See Curry Documents Filed With The CRB After April 2017.

Congress adopted the "substantial good cause" standard with the notion that "a party may have a *valid excuse* for not complying" and so, such party should be permitted "late filing of petitions to participate under *limited circumstances*." H.R. Rep. No. 108-408, at 29 (2004) (emphasis added). Consequently, the CRB implemented this higher standard in its regulations. See Procedural Regulations for the Copyright Royalty Board, 70 Fed. Reg. 30,901, 30,903 (May

31, 2005). It is hard to believe that, as in this case, mere allegations that contradict the facts of the case constitute a “valid excuse” and meet the higher threshold of “substantial good cause” for accepting a late filed petition. Here, the facts demonstrate that Curry’s ability to submit filings with the CRB has not been hampered by his personal situation.

Under the statutory and regulatory requirements, a late petition to participate is permitted only if “substantial good cause” is established and there is no prejudice to other timely-filed participants. 17 U.S.C. § 803(b)(1)(A)(ii); 37 C.F.R. § 351.1(d). Because we do not believe that the facts provide “a valid excuse for not complying,” with the statute and regulations, no “substantial good cause,” has been shown. 17 U.S.C. § 803(b)(1)(A)(ii); 37 C.F.R. § 351.1(d); H.R. Rep. No. 108-408, at 29. Therefore, the issue of prejudice to the other participants is moot.

### **CONCLUSION**

WHEREFORE, in view of the foregoing, AARC respectfully requests that the CRB deny the Motion for Leave to File a Late Petition to Participate filed by Curry because he failed to establish “substantial good cause” for the CRB to accept a late-filed petition to participate pursuant to 17 U.S.C. § 803(b)(1)(A)(ii), 37 C.F.R. § 351.1(d) and the CRB order of February 27, 2019.

Respectfully submitted,  
On Behalf of AARC  
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April 8, 2019

## Proof of Delivery

I hereby certify that on Monday, April 08, 2019 I provided a true and correct copy of the Response to Eugene Curry's Exhibit to the following:

Kelly, Herman, represented by HERMAN KELLY MR served via Electronic Service at hermankelly@att.net

Signed: /s/ Linda R Bocchi